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**FILED  
HARRISBURG**

DEC 18 2000

MARY E. D'ANDREA, CLERK  
Per                       
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STANLEY F. FROMPOVICZ, JR., CAROL  
FROMPOVICZ, t/a FAR AWAY SPRINGS,  
Plaintiffs

NO. 1:CV00-1750

*Caldwell -*

v.

UNION TOWNSHIP, UNION TOWNSHIP  
BOARD OF SUPERVISORS, SUPERVISOR  
BARRY L. SWANGER, SUPERVISOR  
KENNETH A. KINDT, SUPERVISOR  
DAVID A CARBAUGH, ZONING OFFICER  
DONALD TSHUDY, ZONING OFFICER  
WILSON JONES, and DAVID MILLER/  
ASSOCIATES, INC.,

Defendants

JURY TRIAL DEMANDED

**UNION TOWNSHIP DEFENDANTS' MOTION TO  
DISMISS PLAINTIFFS' COMPLAINT**

AND NOW, come Defendants, Union Township, Union Township Board of Supervisors, Supervisor Barry L. Swanger, Supervisor Kenneth A. Kindt, Supervisor David L. Carbaugh, Zoning Officer Donald Tshudy, and Zoning Officer Wilson Jones (hereinafter "Union Township Defendants" and/or "Moving Defendants"), and file this Motion to Dismiss Plaintiffs' Complaint and in support thereof, aver as follows:

1. Plaintiffs, Stanley F. Frompovicz, Jr. and Carol Frompovicz, t/a Far Away Springs, initiated this civil action by filing a Complaint pursuant to 42 U.S. C. § 1983 on October 3, 2000.

2. Plaintiffs' Complaint contains three counts and purports to asserts claims for denial of Plaintiff's Fourteenth Amendment due process rights (Count I); conspiracy to deny due process rights (Count II); and a failure to train and supervise/unconstitutional municipal policy, practice and custom claim (Count III).

3. By Order dated November 29, 2000, this Honorable Court granted Moving Defendants' Motion for Extension of Time to answer or otherwise plead to Plaintiffs' Complaint and directed that Union Township Defendants shall have until December 18, 2000 to answer or otherwise plead to Plaintiffs' Complaint.

4. Plaintiffs' claims, or some of them, are not ripe for adjudication by this Honorable Court.

5. Plaintiffs lack standing to challenge the zoning classification of property owned by individuals and/or entities other than the Plaintiffs.

6. Plaintiffs' Complaint fails to allege a claim or cause of action for denial of Plaintiffs' procedural due process rights upon which relief can be granted.

7. Plaintiffs' Complaint fails to state a claim or cause of action for deprivation of Plaintiffs' substantive due process rights upon which relief can be granted.

8. Plaintiffs' Complaint must be dismissed with prejudice because Plaintiffs have failed to exhaust available state remedies.

9. Plaintiffs' Complaint fails to state a claim or cause of action for conspiracy upon which relief can be granted.

10. Plaintiffs' Complaint fails to state a claim or cause of action for an unconstitutional policy, practice or custom upon which relief can be granted.

11. Plaintiffs' Complaint fails to state a claim or cause of action pursuant to 42 U.S.C. § 1983 for failure to train and/or supervise upon which relief can be granted.

12. Plaintiffs' claims, or some of them, are barred by application of the two-year statute of limitations.

13. Plaintiffs' claims against the individual Defendants in their official capacities merges as a matter of law with the claims against Union Township.

14. Plaintiffs' claims against Supervisors Swanger, Kindt and Carbaugh arising out of the enactment of Ordinance No. 75 of 1999 are barred as a matter of law pursuant to the doctrine of legislative immunity.

15. Plaintiffs' claims for punitive damages against Union Township, Union Township Board of Supervisors and the individual Township Defendants in their official capacities are barred as a matter of law.

WHEREFORE, the Union Township Defendants respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiffs' Complaint and enter judgment in their favor along with the allowable costs of this action.

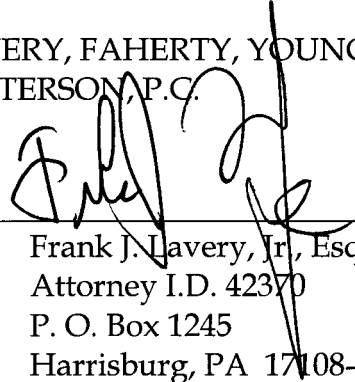
Respectfully submitted,

LAVERY, FAHERTY, YOUNG &  
PATTERSON, P.C.

Date: \_\_\_\_\_

12/18/00

By: \_\_\_\_\_



Frank J. Lavery, Jr., Esquire  
Attorney I.D. 42370  
P. O. Box 1245  
Harrisburg, PA 17108-1245  
(717) 233-6633  
Attorney for Union Township  
Defendants

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**CERTIFICATE OF NONCONCURRENCE**

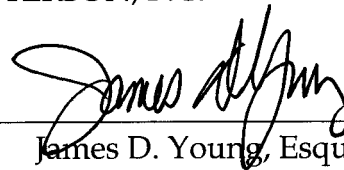
I, James D. Young, Esquire, co-counsel for the Union Township Defendants do hereby certify that I attempted to contact Teri B. Himebaugh, Esquire (Plaintiffs' counsel) to obtain her concurrence/nonconcurrence in the attached Motion, but was unable to reach her. I would assume, however, that Plaintiffs do not concur in the attached Motion.

Respectfully submitted,  
LAVERY, FAHERTY, YOUNG &  
PATTERSON, P.C.

Date: \_\_\_\_\_

12/18/00

By: \_\_\_\_\_



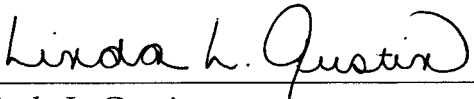
James D. Young, Esquire  
Attorney I.D. 53904  
P. O. Box 1245  
Harrisburg, PA 17108-1245  
(717) 233-6633  
Attorney for Union Township  
Defendants

**CERTIFICATE OF SERVICE**

I, Linda L. Gustin, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 18<sup>th</sup> day of December, 2000, I served a true and correct copy of the foregoing UNION TOWNSHIP DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT via U.S. First Class mail, postage prepaid, addressed as follows:

Teri B. Himebaugh, Esquire  
220 Stallion Lane  
Schwenksville, PA 19473

David Miller/ Associates, Inc.  
1976 Cenerville Road  
Lancaster, PA 17601

  
\_\_\_\_\_  
Linda L. Gustin